

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ERIC RIVERA ELENA, individually and on  
behalf of others similarly situated,

Plaintiffs,

-v-

No. 18-CV-10862-LTS-KNF

YORKVILLE MANSION INC., doing  
business as THE MANSION et al.

Defendants.

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ORDER

Plaintiff, acting through counsel, filed this action on behalf of a putative class (under Federal Rule of Civil Procedure 23) and collective (under the Fair Labor Standards Act, 29 U.S.C. § 216(b)) on November 20, 2018. (Docket Entry No. 1.) On December 30, 2019, and again on February 4, 2020, plaintiff's attorneys filed a motion to withdraw as his counsel, reporting, among other things, that plaintiff had failed to appear at a scheduled settlement conference in November 2019 and had stopped communicating with their office. (See Docket Entry Nos. 27, 28, 31-34.) On March 18, 2020, the Honorable Kevin Nathaniel Fox, United States Magistrate Judge, granted the motion to withdraw, and directed plaintiff to either "have new counsel file a notice of appearance with the Clerk of Court" or, if plaintiff wished to proceed pro se, provide the Clerk of Court with his address and phone number, by no later than April 20, 2020. (Docket Entry No. 36.) Plaintiff failed to do either. On August 13, 2020, the Court ordered plaintiff to either "(1) file with the Court [ ] his current address and telephone number, **OR** (2) appear by new counsel [ ], **OR** (3) show cause through a written affidavit filed with the Court [ ], why the action should not be dismissed with prejudice for failure to comply with Court

orders and proceed with proper prosecution of this case,” by no later than September 11, 2020. (Docket Entry No. 41.) Plaintiff again failed to respond to the Court’s order.

Because Plaintiff has failed to comply with the Court’s orders and has taken no further action to prosecute this matter since late 2019, plaintiff’s complaint is dismissed with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of Court is respectfully requested to close this case.

SO ORDERED.

Dated: New York, New York  
September 30, 2020

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge

**Copy mailed to:**  
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